IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL NO. 989 OF 1984
With
CROSS OBJECTION NO. 91 OF 2007
In
FIRST APPEAL NO. 989 OF 1984

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the Civil Judge ?

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GUJARAT STATE ROAD TRANSPORT CORPORATION - Appellant(s)
Versus
SHANTAGAURI KESHAVLAL & ORS. - Respondent(s)

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Appearance :
Ms. Maya Desai for Appellant(s).
Shri Mehul S. Shah for Respondent(s) : 1 - 8.
None for Respondent(s) : 9 though served.

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 25/07/2007

ORAL JUDGMENT

Being aggrieved by the judgement and award made by the

learned Claims Tribunal (Main), Junagadh on 20th September, 1983 in M.A.C.P. No.177 of 1981, the appellant-owner of the vehicle is before this Court.

2. The learned Tribunal below has awarded a sum of Rs.2,90,000/- in favour of respondent Nos.1 to 8, but, the appellant has confined its claim to Rs.1,50,000/- only, which would mean that they are not challenging the findings relating to rashness, negligence, accident, death and dependency of the respondents.

3. According to Ms. Maya Desai, learned Counsel for the appellants, the learned Tribunal was unjustified in holding that the income of the deceased could be Rs.18,000/- per year and also erred in holding that the dependency was Rs.18,000/- per year. She submits that the agricultural income would continue to be the same and there would be no loss of income from the partnership business because the capital used by the deceased continues to be investment in the business.

4. Shri Mehul S. Shah, learned Counsel for the respondents-claimants, on the other hand, submitted that the learned Tribunal below was unjustified in assessing the loss at Rs.18,000/- per year. According to him, the claimants were entitled to much more than what has been awarded in their favour. He also submitted that in view of the

judgement of the Supreme Court in the matter of ***Smt. Sarla Dixit & Anr. vs. Balwant Yadav & Ors.***, reported in ***AIR 1996 SC 1274***, the claimants' entitlement is much more.

5. In the present case, the learned Tribunal below has found that the income from agriculture was Rs.12,000/- plus and the income from the partnership business could be assessed at Rs.6,000/-. Though the learned Tribunal has held that some of the partnership concerns were running in losses, but, the learned Tribunal has found that these losses could provide solace to the deceased for claiming deductions in other heads. It has come on record that the deceased was earning Rs.6,000/- per annum from the business. The finding recorded by the learned Tribunal below in relation to the said income cannot be said to be wrong or unjustified.

6. So far as the income from agriculture is concerned, it was nobody's case that the deceased had parted with the possession of the land, had given it for agricultural operations to a third party and was sharing the crops. The evidence available on the record shows that the deceased was employing the labour and under his personal supervision, was carrying the agricultural operations. In absence of the supervisor, one who could look after the agricultural operations, if the claimants are required to employ someone else, then, certainly, they would be required

to share the earnings and then, their income would be adversely affected. I am unable to hold that the learned Tribunal below was unjustified in holding the agricultural income to be Rs.12,000/- plus.

7. It was contended by Ms. Desai that in a matter like the present, the learned tribunal below if was justified in assessing the yearly income to be Rs.18,000/-, then, the learned Tribunal below was required to make deductions towards the personal expenses of the deceased and if 1/3rd of the amount is deducted, dependency of the family would be Rs.12,000/- per annum only.

8. Shri Shah submitted that the dependency of the family was rightly assessed. According to him, the deceased at the zenith of his life, could reach to the income of Rs.36,000/- per year and if that is added to the personal income of Rs.18,000/- and mean of the same is taken, then, that would be the total yearly income of the deceased based on the formula as provided by the Supreme Court in the matter ***Smt. Sarla Dixit*** (*supra*). He submitted that out of the amount of Rs.27,000/- if 1/3rd is deducted towards expenses, the dependency figure would be Rs.18,000/- per year .

9. After going through the judgement in the matter of ***Smt. Sarla Dixit*** (*supra*), I must agree with the submissions made by Shri Shah. I, accordingly, hold that the dependency of the family could be

Rs.18,000/- per year. The learned Tribunal below was also not unjustified in applying the multiplier of 15 (fifteen) looking to the age of the deceased.

10. I find no reason to interfere. The appeal and the Cross Objections deserve to and are, accordingly, dismissed. No costs.

[R.S.Garg, J.]

*kamlesh**